

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0168**

**Sales & Use Tax**

**Calendar Years 1987 through 1993 and Short Year ending September 24, 1994**

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**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

The taxpayer protests the negligence penalty related to an audit performed for the period January 1, 1987 through September 24, 1999.

The taxpayer is a purveyor of frozen drinks. The taxpayer sells frozen drink ingredients and supplies to the taxpayer's customers who resell the drinks. The frozen drinks are produced from frozen drink machines owned by the taxpayer and used by the taxpayer's customers on the customers' premises. The only property owned by the taxpayer in Indiana is the frozen drink machines.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer protests the negligence penalty assessed by the Department on the manufacture of frozen drink machines by the taxpayer. The taxpayer states several reasons as to why the negligence penalty should be waived. The details follow:

1987 through 1989. The frozen drink operation was owned by a different company prior to 1990. The taxpayer argues that because of this, the taxpayer is not responsible for the use tax liability. The Department disagrees. As the taxpayer

purchased the stock of the other company, the taxpayer is responsible for any liabilities resulting from the other company's operation in the prior period.

1990 through 1993. During this period, the frozen drink operation was owned by the taxpayer. The accounting function was operated by a controller who basically acted on his own disregarding any direction from the taxpayer. The taxpayer argues that because the taxpayer had no control over the controller, the taxpayer should not be subject to the penalty resulting from the use tax liability. The Department disagrees. As the controller is an employee of the taxpayer, the taxpayer has legal responsibility for the controller's actions.

1994. In 1994, the accounting function was moved to another state. The taxpayer paid use tax to that state on the manufacture of frozen drink machines. The taxpayer argues that since they paid use tax in good faith to the other state, the taxpayer should not be assessed penalty. The Department disagrees. The taxpayer was unaware of Indiana tax laws and is subject to the negligence penalty.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

As the taxpayer was either inattentive or ignorant of Indiana tax laws, the Department finds the taxpayer negligent and denies the penalty protest.

### **FINDING**

The taxpayer's penalty protest is denied.